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# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1932.

No. [redacted] 11

No._____

R. S. STERLING, GOVERNOR OF TEXAS, ET AL,
*Appellants,*

vs.

E. CONSTANTIN, ET AL,
*Appellees.*

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF TEXAS.

## MOTION TO CONSOLIDATE THE TWO APPEALS AND TO ADVANCE THE CONSOLIDATED CAUSE ON THE CALENDER.

DAN MOODY,
E. F. SMITH,
Solicitors for Appellants.
JOS. W. BAILEY, JR.,
Solicitor for Appellees.

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1932.

## No. 746

No.----------

R. S. STERLING, GOVERNOR OF TEXAS, ET AL,
*Appellants,*

VS.

E. CONSTANTIN, ET AL,
*Appellees.*

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF TEXAS.

## MOTION TO CONSOLIDATE THE TWO APPEALS AND TO ADVANCE THE CONSOLIDATED CAUSE ON THE CALENDER.

Hon. R. S. Sterling, Governor of the State of Texas, in a formal proclamation of Martial Law, declared a state of insurrection, riot, tumult and breach of peace to exist in four counties in the State of Texas, and directed the Appellant, Hon. Jacob F. Wolters, Brigadier General Texas National Guard, to assume supreme command of the situa-

tion and to take such steps as he may deem necessary to enforce and uphold the majesty of the law, subject to the orders of the Governor.

Thereafter, in a subsequent order, the Governor directed the Appellant, General Jacob F. Wolters, to limit the production of oil in the four counties to one hundred barrels of oil per day per well. In this connection the Governor declared in said order:

"I believe that it is necessary, as a precaution against acts of insurrection, riot, breach of peace, tumult and general disorder, of which there is imminent danger in the aforesaid counties, and that it is a proper measure and the only means at my command to suppress the existing insurrection in said counties and prevent further acts of insurrection, riot, tumult, breach of peace and general disorder in said counties, and to remove the existing imminent danger of such unlawful acts in said counties, for me to cause oil production from each well in said counties to be limited and restricted for the present to 100 barrels of oil per day."

Appellees alleged in their petition that they owned four producing oil wells in the territory embraced within the Governor's declaration of martial law, and in this case sought an injunction against the Governor, General Wolters and General Sterling, Appellants herein, enjoining them and each of them from enforcing the orders of the Governor limiting the production of oil.

The case was first tried on Appellees' aplication for a temporary injunction before a three-judge court, organized as provided for by Section 266 of the Judicial Code (28 U. S. C. A. Section 380). A temporary injunction was granted and issued. From this temporary injunction Appellants heretofore, and at the 1931 term of the court, perfected their appeal to this Honorable Court. The case was not reached by this court during the 1931 term.

In the meantime, the case was tried on its merits before the three-judge court organized as hereinabove set forth, and as a result of that trial a permanent injunction was granted against the Appellants. Both the temporary and permanent injunctions expressly provided that Hon. R. S. Sterling, Governor of Texas, Hon. W. W. Sterling, Adjutant General of the State of Texas, and Hon. Jacob F. Wolters, Brigadier General Texas National Guard, and all persons acting for or with or under the direction of them, be and they are hereby enjoined from enforcing against Complainants any of their so-called military or executive orders, passed or to be passed, regulating or restricting production of oil from the Complainants' wells, or from in any manner, directly or indirectly, interfering with the lawful production of oil from Complainants' property.

By stipulation between Appellees and Appellants, it was agreed at the time the case was tried on the merits that the case should be tried and decided on

the existing pleadings and on the record of evidence introduced at the trial upon the application for an interlocutory injunction. It was further stipulated that the record now on file in the office of of the Clerk of the Supreme Court of the United States in cause No. 746, R. S. Sterling, Governor of the State of Texas, etc. et al, Appellants, vs. E. Constantin et al, Appellees, is a true and correct transcript of the record on the appeal from the order granting the interlocutory injunction. It was further stipulated that in any appeal from the final judgment as between the Appellees and these Appellants, either or any of the parties to such final judgment so appealing may use the transcript of record now on file in the office of the Clerk of the Supreme Court of the United States in said cause No. 746, as the record on appeal from the final order entered as between the Appellees and these Appellants, and the party or parties so appealing from such final order may, in addition to said record now on file in the office of the Clerk of the Supreme Court of the United States, take up as additional parts of said record this stipulation, the final judgment of the court, such bonds and other parts of the record as the appealing party may desire. It was further stipulated between Appellees and Appellants that such appeal from such final order shall be consolidated in the Supreme Court of the United States with the appeal which has been taken and is now

pending in the Supreme Court of the United States from the interlocutory injunction order heretofore granted.

In this connection, the attention of the court is respectfully directed to the fact that Appellants have perfected an appeal from the final judgment of the court granting a permanent injunction and have, in addition to the record on file in this Honorable Court in said cause No. 746, brought up additional matters in accordance with a stipulation between the parties as to what the record on appeal from the permanent injunction should contain. This record is being printed and the printing will be completed at the time this motion is presented to the court.

The foregoing stipulation of the parties, made at the time this case was tried on the merits, was approved in all respects by each of the three judges presiding at the trial, and is a part of the printed record on appeal from the judgment or decree of the court granting the permanent injunction.

Heretofore, cause No. 746, being Appellants' appeal from the order of the court granting the temporary injunction, was set down for submission before this Honorable Court for October 14, 1932. At the time Appellants received notice that cause No. 746 had been so set down for submission, the case had been tried on its merits and a decree or judgment entered granting the permanent injunction, as hereinabove set forth. By telegrams, counsel for

Appellees and for Appellants advised the Clerk of this Honorable Court of this fact, and requested that submission of cause No. 746 be passed until the appeal from the permanent injunction was perfected. Appellants were advised by telegram from the Clerk that the Chief Justice of this Honorable Court had granted such request.

It is believed that the foregoing statement shows that this case is an emergency one, and because of its nature and importance is entitled to be advanced on the calendar of this Honorable Court.

WHEREFORE, Appellants pray that their appeal from the judgment or decree of the lower court granting a temporary injunction and their appeal from the decree or judgment of the lower court in the same case granting a permanent injunction be consolidated and tried before this Honorable Court as one case; and further pray and move the court to advance the cause as consolidated for hearing at the earliest time compatible with the other business of the court.

DAN MOODY,
E. F. SMITH,
Solicitors for Appellants.

I, Joseph W. Bailey, Jr., counsel for Appellees, hereby enter appearance herein in the Supreme Court of the United States, and request that the foregoing motion to consolidate and to advance be granted.

JOS. W. BAILEY, JR.,
Solicitor for Appellees.

Austin, Texas,
October 11, 1932.